

Haywood County "Toeprints"

March 29, 2014

Vol. #5 Issue #4 (Subject: June Ray, David Francis, Barbara Parker)

www.haywoodtp.net

What's Happening?

The purpose of this newsletter is to inform Haywood County Taxpayers of what transpires at the bi-monthly County Commission Meetings. This newsletter will be written from the perspective of a casual observer, myself. Any opinions expressed will be mine.

Barbara Parker, President, HCC and FLS Fiasco.

I met with **Barbara Parker** and Richard Lanning, chair of the Board of Trustees, on 9/27/2013 in her office for the purpose of explaining to this new HCC President background on the FLS solar thermal system in the Creative Arts Building. Also, I requested current operational data on the system, available from a subcontractor, Harris Integrated Solutions, Inc. located in Columbia, SC.

Barbara Parker insisted I create a "Request for Public Information, FLS Solar Thermal Data", and she would bring it up at the next Board of Trustees meeting.

Here is the request, via e-mail:

Dr. Parker,

Thank you and Richard Lanning again for setting aside some time with me this morning to discuss the FLS solar thermal design problems in the Creative Arts Building.

I would like to request data collection information that has been captured by PLC's (Programmable Logic Controllers) since the inception of FLS solar thermal equipment being turned on at the Creative Arts Building up through current data (today). Harris Integrated Solutions, a subcontractor for Haynes Electric Construction Company, should have this data. FLS should also have an independent set of data, but I understand that may be a little more difficult to extract out of them.

As I understand the system, there are two main elements:

1. The FLS solar thermal equipment (labeled as "Primary"), and
2. The conventional back-up equipment (labeled as "Secondary"), which is activated when the sun does not shine (or some other reason).

Harris equipment should be the controlling entity that either turns on the liquid propane boilers when heating requirements exceed FLS capacity in the winter, for example, and switching on the conventional air conditioning units when the Absorption Chiller cannot cool the place in the summer. Harris should have data for both FLS and

their equipment to be able to handle this switch-over control. I would like to review all data that Harris has connected with the heating / cooling equipment. Additionally, I would like to see included the output of the solar voltaic equipment, as that would give a more direct indication of sunlight on an hour by hour basis. Importantly, I would like to have the temperature of the coolant in the 15,000 gallon tank, and any and all other relevant data.

Hopefully, this data can simply be copied on to a DVD to examine. Jim/John Harris, on a prior visit to their facility, also offered to have someone come over to HCC and explain the system to HCC Board of Trustee members. That may or may not still be on the table.

Let me know if Pat Smathers has any problem with this request. Thank you, Monroe Miller

The next Board of Trustees meeting was held on October 7, 2013, attended by:

- Personnel from Harris Integrated Solutions (on stand-by),
- **Pat Smathers**, lawyer for HCC.

When the agenda item came up (XII.), **Pat Smathers** got up and addressed the Board of Trustees and spent over twenty minutes (20 min.) explaining to board members why the information I was requesting was not public information. This resulted in board members like **Mary Ann Enloe** [re: [UPDATE Abuse of Power. §128-1.1. Dual-office holding allowed. Mary Ann Enloe holding three offices. Dialog with Eddie Cabe. 2 / 26 / 2014](mailto:UPDATE%20Abuse%20of%20Power.%20%24128-1.1.%20Dual-office%20holding%20allowed.%20Mary%20Ann%20Enloe%20holding%20three%20offices.%20Dialog%20with%20Eddie%20Cabe.%202%2F26%2F2014...) , <http://haywoodtp.net/pubII/140226UPDATE-EnloeAbuseOfPower.pdf>], persuading other board members to blow off this request for public information. **Barbara Parker** looked over after the meeting and said "sorry", but I am authorized to give you some alternate information. I received twenty seven (27) pages of **meaningless garbage** a couple of days later. One of these pages is appended to the end of this newsletter. It is utterly garbage.

Barbara Parker has now dropped to the level of the previous two (2) people holding the position of President of HCC, that of **Rose Johnson** and **Bill Aiken**, in my view. There has been a complete shut-down of information about this FLS solar thermal system due to the lid **Barbara Parker** has placed on it. By the way, **Michael Shore**, prior President of FLS, has since resigned. Who knows if the [expletive deleted] system is working at all.

Mary Ann Enloe.

See: [UPDATE Abuse of Power. §128-1.1. Dual-office holding allowed. Mary Ann Enloe holding three offices. Dialog with Eddie Cabe. 2/26/2014...](http://haywoodtp.net/pubII/140226UPDATE-EnloeAbuseOfPower.pdf), <http://haywoodtp.net/pubII/140226UPDATE-EnloeAbuseOfPower.pdf>].

Several county officials and **Vicki Hyatt** determined that they would get to the bottom of Dual-Office holding. But instead of researching Case Law, they decided they would ask UNC School of Government professors (some of whom are lawyers) for their opinions. Frayda Bluestein is one of the folks these people consulted with.

Prior to this set of questions, **Chip**, a.k.a. **Leon Killian**, County Attorney, had asked Frayda Bluestein her opinion as to whether **Kevin Ensley [RINO]** had to cough up his e-mails based on several Requests for Public Information. **Kevin Ensley [RINO]** has never responded.

Folks that jumped on this bandwagon were:

- **Chip, a.k.a. Leon Killian**, a lawyer
- **Ira Dove**, a lawyer
- **Vicki Hyatt**, a newspaper reporter at the Mountaineer
- **Denny King**, a guy with a question.

After receiving some initial responses from both a Trey Allen Assistant Professor of Public Law and Government, School of Government, The University of North Carolina at Chapel Hill, and Frayda S. Bluestein, David M. Lawrence Distinguished Professor of Public Law and Government, Associate Dean for Faculty Development, School of Government, The University of North Carolina at Chapel Hill, Denny King restated the line of questioning from **Chip, a.k.a. Leon Killian, Ira Dove** (a lawyer) and **Vicki Hyatt**, self appointed investigative reporter who made the determination "No laws broken", and Denny received the following back from Frayda Bluestein:

Subject: Re: Dual office holding, place of trust
Date: 3/14/14 11:39:17 AM
From: "Bluestein, Frayda S"
To: kingsplace@charter.net

Hi Denny:

I have reviewed your letter and I stand corrected regarding the case law on dual office-holding. The Edwards case holding that dual office-holders are usurpers rather than defacto office holders involved two separate dual office-holding situations and the court found that this violated the constitution. Lawrence's article goes on, however, to note several concerns about the validity of that the holding, and because of the different facts of this situation, I'm not sure it applies. Lawrence notes on pages 14-15:

"There is one additional reason for concern about a rule that refuses to accord de facto status to a person who holds one too many public offices. When Edwards and the other cases that refused to apply the de facto officer doctrine in this situation were decided, the state constitution prohibited a

person from holding two public offices, and the rules were clear about which office was lost when a person was in violation of the constitutional limitation. Since 1971, however, the constitution has permitted a person in a number of situations to hold two offices and prohibits him or her from holding a third. 56 Whereas we earlier had a prohibition on dual office holding, we now have one on multiple office holding. One consequence of this constitutional change is that we no longer can be sure of the effect when a person assumes one office too many; there have been no cases that have reached the appellate level and therefore no opportunity for the courts to fashion an appropriate rule. If a person who legitimately holds two offices then qualifies for a third, does he or she vacate the first office assumed or the second; or, perhaps, does such a person simply never legally qualify for the third? We simply don't know, and this uncertainty creates the real possibility of disruption of settled legal expectations that the de facto officer doctrine is intended to avoid. When and if an appropriate case reaches the supreme court, the change in constitutional provision affords the court an opportunity to revisit whether the de facto officer doctrine should apply to a person who holds too many public offices."

Based on the discussion in the bulletin, and on the very helpful information you provided about the nature of the county fairgrounds governing board I would conclude the following in answer to your original questions. I agree that the nonprofit is structured in such a way that it would be considered to be a public, rather than a private agency, and that it would be considered an agency of the county. The analysis of when a private entity is treated as a public one has developed through case law (summarized in a blog post here: <http://canons.sog.unc.edu/?p=1872>), and the factors courts have used seem to be present in this case. These include control over appointment and operation, as well as fiscal oversight by the public agency (the county in this case). I also think that the county fairgrounds board members likely would be considered to hold a public office. The law on what constitutes a public office primarily also comes from individual cases, but based on the holdings in some of those cases (discussed in a blog post here: <http://canons.sog.unc.edu/?p=1872>) I think there is a good chance that a court would find the fairground board members' responsibilities to be consistent with those of a public office. Assuming that the appointment to the fairgrounds board is a public office, the person would hold three appointive offices. This would violate the constitution and the statute, both of which limit appointive offices to two. As to the effect on actions taken, I would note Lawrence's concern in the bulletin, which is that there is no way to determine which office, if any, is vacated. Based on Lawrence's work, it doesn't appear that there are any cases dealing with three appointed offices. The holding in Edwards that dual officers are usurpers involved, in one instance two elected offices, and in the other, one elected and one appointed. It's unclear how a court would rule as to the impact of holding three appointive offices on decisions made during the period in which the person was in all three offices. A court might hold that the person never qualified for the third office, or that one of the prior offices was vacated. Either of those scenarios would could affect decisions made during the time that the person held all three

offices. On the other hand, as noted in Lawrence's analysis, it would appear that the underlying policies as enunciated in the cases supporting the defacto status might well apply in this situation. Until there is a court case involving these facts, it is difficult to come to a solid conclusion about the impact on actions taken.

I hope this information will be helpful. Frayda
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No known response from **Swanger, Kirkpatrick, Upton, Sorrells, Ensley [RINO], Dove** or **either Killian** on this latest reply.

June Ray and David Francis.

I have been investigating a foreclosure (actually two foreclosures) held recently within the past year which involves these two officials. **June Ray** is Clerk of Superior Court, and **David Francis** is Haywood County Tax Collector, a.k.a. Tax Administrator. The two foreclosures, a Trustee's Deed foreclosure was initiated by lawyer **Rusty McLean**, and a Sheriff's Deed Foreclosure was initiated by **David Francis**. **June Ray** and **Sam Hyde** (Assistant Clerk of Superior Court) figure heavily in this complicated process. There are three (3) case files associated with these foreclosures:

- 12SP441
- 12CV1396
- 13SP252

These cases are so complicated and inter-twined, that I had to resort to creating a "flow diagram" of this process and a diagram of a "cast of characters". In all honesty, I created this flow diagram so that it could be explained to Michelle Presnell. It has been reviewed by numerous law enforcement officials, including WPD Chief Bill Hollingsed and Haywood County Sheriff Greg Christopher.

All of the information contained on the Flow Diagram and Cast of Characters Diagram are fully documented and are bullet-proof.

These flow diagrams are contained on rather large sheets of drawing paper, and each page has been scanned to an individual pdf file, including the cast of characters.

I plan to start introducing these sheets, one-by-one on www.haywoodtp.net. Watch for them shortly.

Additionally, an Affidavit has been created and been placed into 13SP252 and filed with the Register of Deeds. That will also soon appear on www.haywoodtp.net.

WPD Arrest Report.

An Arrest Report has been posted on www.haywoodtp.net. Some questions are already starting to appear:

- What is Vida Loca, an S Corp?
- What is Blue Mountain Brokers, LLC?

Legend: If any name is in **bold**, it can't be a good thing.

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WebCTRL Server - /Haywood Campus/Haywood Community College/Creative Arts Buiding/Central Plant - [Trends : None : chill : View] -

10:24:12 AM 10/9/13

OCT 11 2013

Central Plant - chill

